IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 623 OF 2007

Deputy General Director, Employees State Ins. Corp. vs. Brijlata S. Jaju

SECOND APPEAL NO. 624 OF 2007

Deputy General Director, Employees State Ins. Corp. vs. Aarti S. Jaju

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
DECEMBER 20, 2007.

Heard Mrs. Maldhure, learned counsel for the appellants – tenants.

The respondent – landlord, after obtaining permission from Rent Controller, issued notice under Section 106 of Transfer of Property Act and terminated tenancy. As the appellants did not vacate, he filed the suit for recovery of possession and for mesne profits. The trial Court decreed the suit. Regular Civil Appeal under Section 96 filed by present appellants before the District Court has been dismissed.

Mrs. Maldhure, learned counsel

contends that some time after the decree of trial Court, possession has been handed over and all arrears of rent have also been cleared. She contends that this aspect has got material bearing while considering the discretion available to trial Court under Order 20, Rule 12 of Civil Procedure Code and in present facts, there could not have been any order for enquiry into mesne profit from the date of institution of suit. She contends that considering the nature of appellants as an instrumentality of Central Government and also the fact that possession has been handed over by clearing all rents, in present facts no enquiry could have been ordered. In the alternative, she contends that in any case said enquiry could have been only from the date of decree of the trial Court. She relies upon use of word “may” in Order 20, Rule 12 to substantiate her contention.

The word “may” in Order 20, Rule 12 of C.P.C. does not empower Court to deny mesne profit to plaintiff if plaintiff proves his entitlement to it because of any conduct or attitude of tenant. Thus, mere continuation of possession after determination of his tenancy

by tenant is sufficient for said rule. If the argument of learned counsel is accepted, a tenant may well defeat said provision by vacating the suit premises when the Court is about to deliver the judgment.

In present facts, the landlord has proved his entitlement to mesne profit and Court below has, therefore, rightly ordered enquiry into it.

No substantial question of law arises in these Second Appeals. The same are disposed of accordingly. No order as to costs.

JUDGE

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